

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 146 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JINABHAI JERAMBHAI VAGHASIA

Versus

HARISHCHANDRASINHJI DILIPSINHJI JADEJA

Appearance:

MR JR NANAVATY, Ld. Sr.Advocate with AR THAKKER for Appellant
MR PV HATHI for Respondent No. 1, 2

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 28/09/2000

ORAL JUDGEMENT

This appeal is filed under Section 104(1) of CPC
read with Order 43 Rule 1(r) of the CPC by original
plaintiff of Special Civil Suit No.71 of 1999 which is
still pending on the file of the learned Civil
Judge(S.D.), Gondal (who will be referred to hereinafter

as the learned Judge of the trial Court). He has by filing this appeal challenged an order dated 11th April, 2000, passed below Exh.5 in Special Civil Suit No.71 of 1999.

2. Here in this appeal, the appellant is the original plaintiff while the respondents are the original defendants in the aforesaid suit and, therefore, parties will be referred to hereinafter as plaintiff and defendants respectively at appropriate places.

3. When this appeal came up for hearing before this Court, the learned advocates for both the parties jointly submitted to this Court that, without observing anything about the order challenged in this appeal and without assigning any reason in the judgment, this appeal may be disposed of by giving suitable directions to the learned Judge of the trial Court.

4. Having heard the learned advocates for both the parties and on going through the grounds of appeal stated in appeal memo for this present appeal, this Court is of the view that the order dated 11th April, 2000, passed below Exh.5 in aforesaid suit is required to be set aside with an order to remand the same to trial Court for hearing and deciding it afresh. Both the parties are permitted to produce the documents and materials in the trial Court, if any, if not produced so far in support of their respective cases and thereafter the learned Judge of the trial Court shall hear and decide application Exh.5, afresh by affording full opportunity of being heard to both the parties within a statutory period of 30 days as per Order 39 Rule 3A of CPC from the date of receipt of writ of this Court, without being influenced, in any manner, by the order of this Court.

5. Meanwhile the respondents i.e. defendants, as per undertaking given to this Court shall not put any kind of construction on the suit property which is described in para 7(a) of the plaint, till Exh.5 is finally decided by the learned Judge of the trial Court, pursuant to this order.

6. Meanwhile, the defendants shall not dispose of the said suit property, in any manner, till final decision of the application Exh.5 in Special Civil Suit No.71 of 1999.

With the aforesaid directions, this appeal stands disposed of accordingly with no order as to costs. Office is directed to send the writ of this order to

trial Court without any delay.

(H.H. Mehta, J.)

syed/